

Minority and Women's Business Enterprise Inclusion Plans

June 2014



Washington State Contracting Equality Programs Overview

In 1983 the Washington State Office of Minority and Women's Business Enterprise (OMWBE) was established to serve as the central certifying authority for the state Minority and Women's Business Enterprises (M/WBE) Program and US Department of Transportation Disadvantaged Business Enterprise (DBE) Program. These programs are very similar in nature and were intended to create a level playing field in state contracting for firms owned and controlled by minorities and women.

Until 1999, both of these programs allowed contractors to be scored higher in project evaluations or awarded contracts if they used M/WBEs or DBEs or demonstrate adequate good faith efforts. As a result of the passage of [Initiative 200](#) (banning preferential treatment of minorities and women in state funded contracting and hiring activities), mandatory M/WBE compliance on projects funded entirely with State funds was modified to become a voluntary, aspirational goal for state agencies and higher education institutions. The DBE program remained intact for projects when federal funding is involved. To this day, state contracts that involved USDOT funds are required to have DBE utilization goals.

Washington State Department of Transportation M/WBE Program

The Washington State Department of Transportation (WSDOT) has a voluntary approach to the M/WBE Program. Presently, voluntary goals are set on procurement and construction projects (with sufficient opportunities). On construction projects, the contractors are required to submit M/WBE Participation Plans after award of the contract. This Participation Plan is then evaluated for sufficiency and the contractor is provided with feedback. The contractor is required to submit monthly affidavits of payment; however, contractors are not contractually obligated to meet the voluntary goal.

Absent contractual requirement mechanisms for state funded projects, outreach to M/WBEs is an essential programmatic effort to educate M/WBEs of upcoming contracting opportunities. WSDOT presently performs extensive outreach by partnering with transit authorities, state agencies, local jurisdictions and community partners to advertise WSDOT contracting opportunities and requirements with the intent of obtaining more M/WBE utilization.

City of Seattle's Inclusion Program

After Initiative 200, the city of Seattle had a very extensive outreach program similar to the state, but minimal M/WBE participation. In 2011, the City of Seattle implemented a good faith effort mechanism in locally funded contracts commonly known as an inclusion plan. The inclusion plan incorporates the identified goal by the contractor as a condition of award. The City of Seattle holds the contractor liable for identifying an obtainable goal as part of good faith effort.

Since the City of Seattle only recently launched this program, they were unable to provide information on whether or not it has increased M/WBE utilization. Additionally, the City of Seattle informed the state that DBE program participation is counted toward M/WBE utilization

without the federal dollars being included, which could artificially inflate their present utilization.

Advantages

City of Seattle's Inclusion Plan is evaluated as part of the contractor's responsiveness. It is scored and evaluated to determine if the contractor can be awarded the contract. Presently, WSDOT requires Participation Plans after contract award and the contractor's ability to share equity has no contractual obligation and is not monitored for contractual compliance. Once a contractor submits an Inclusion Plan to Seattle, it is considered a contractual obligation. Therefore, if the firm notes they will utilize minority and woman owned businesses, not doing so could impact their future ability to work with the City of Seattle.

The contractors' ability to meet the Participation Plan is scored and evaluated. This evaluation impacts the contractor's future ability to be considered responsive for bids with the City of Seattle.

A program of this size and scope does place additional emphasis on subcontracting with minority and woman owned businesses and increases the visibility and marketing of M/WBEs. Additionally, the City of Seattle created this program with input from stakeholders and other members of the community. Lastly, the City of Seattle's Inclusion Program was a top down initiative with staff understanding the importance of contracting equality. The Secretary of Transportation is presently working with internal and external stakeholders and the Governor's Office to increase the emphasis of WSDOT's contracting equity efforts while increasing utilization of firms owned by socially and economically disadvantaged individuals.

Disadvantages

The minority and woman owned businesses in the City of Seattle program are self-certified. Firms are assumed to be legitimately owned and controlled by a minority or women unless a complaint is received about the firm and then the firms are investigated to determine their eligibility. Washington state and federal government officials have voiced concerns for self-certification and determined self-certification is unacceptable. The fear is that firms could take advantage of programs of this nature to gain a competitive advantage and the numbers reported may be inaccurate.

The city of Seattle appears to perform monitoring and enforcement at the end of the contract, with quarterly "check ins". WSDOT collects affidavits of payment but does not penalize contractors if they do not meet the goal or submit the information. A combination of the two approaches would be the most successful for increasing minority and woman owned businesses utilization, if allowable under state law¹.

As is typical with any new program, implementation of the program required an educational and adjustment phase for the contracting community, agency staff, and other stakeholders. Upon implementation of the program the City of Seattle experienced an adjustment phase where contractors overstated their minority and woman owned businesses utilization in the Inclusion

¹This Proviso Report does not include a legal analysis of the City of Seattle's Inclusion Program.

Plan. This required additional training of the prime contractors to note realistic minority and woman owned businesses goals.

The City of Seattle has staff available within most procurement and contracting offices to assist with M/WBE efforts.

Realized Benefits

From January 1, 2014 through April 30, 2014, the City of Seattle reported 15.96% M/WBE participation (available at: www.seattle.gov/purchasing/wmbereports.htm). This is significantly higher than the most of the State of Washington's and WSDOT's M/WBE utilization, 0.16%². However, WSDOT is presently achieving 15.73% in DBE commitments and 12.03% in DBE payments.

Recommendations

WSDOT will continue to work with OMWBE to determine the best method for increasing M/WBE utilization.

² The OMWBE Reporting system has recently undergone significant changes and does not presently provide an avenue for WSDOT to add subcontractor payments which is where the majority of M/WBE participation comes. WSDOT will be working with OMWBE and the Department of Enterprise Services on resolving this issue.